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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.M., a Person Coming Under
the Juvenile Court Law.

B292842

(Los Angeles County
Super. Ct. No. 18CCJP02971A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Lisa Jaskol and Jean Nelson, Judges. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal,
for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, Kristine P. Miles, Assistant County Counsel, and

Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

The Los Angeles County Department of Children and Family Services (Department) asked the juvenile court to take dependency jurisdiction over five-year-old L.M. after learning of multiple episodes of domestic violence between his parents Ri.M. (Father) and Ra.M. (Mother). The juvenile court agreed and removed L.M. from Mother and Father's custody. While this appeal has been pending, the court returned L.M. to Father's custody, rendering Father's challenge to the removal order moot. Thus, we consider only Father's argument that substantial evidence does not support the court's jurisdiction finding because L.M. did not witness the domestic violence.

I. BACKGROUND

A. *Pertinent Family History and the Episodes of Domestic Violence That Led to Department Intervention*

Mother and Father had been in a relationship for over thirteen years when dependency proceedings commenced. They previously lived in New York and had moved to Los Angeles approximately two years earlier.

The Department began investigating the family's welfare after receiving a referral alleging domestic violence between Mother and Father. Department personnel obtained a Los Angeles Police Department report detailing two episodes of domestic violence for which Father had been arrested (and on the basis of which Mother had obtained a temporary restraining order).

According to the police report, Mother was in the shower one Friday in late March 2018, when Father barged in and opened the shower door. Father was angry at Mother for going to

a nightclub the evening before, and he punched, kicked, and slapped Mother approximately ten times. Father yelled at Mother, demanding she leave and move out. Afraid Father would continue to attack her, Mother got out of the shower, dressed, and ran out of the apartment. Mother did not return to the apartment that weekend.

The police report detailed a second incident that occurred at Mother's workplace, a Pep Boys, the following Monday. According to the report, Mother had been assisting a customer when she observed Father running towards her. Mother ran through a service area with Father in close pursuit. As Mother entered the main store through the side door, Father grabbed the back of her shirt and took her to the front of the store. L.M., who Father had brought with him to the Pep Boys, entered the front of the store and walked to Mother. At that point, Father released his grip on Mother and left the store. Mother then held L.M.'s hand and attempted to give him back to Father because she could not watch him at work, but Father entered his vehicle and drove away. Mother told the police that Father was out of control, had threatened to kill her in the past, and might try to kill her if he saw her again. Mother also told the police she had previously obtained a restraining order against Father in New York, which the police verified.

In addition to obtaining the police report, a Department social worker interviewed Mother. Her statements to the social worker paralleled what was documented in the police report. Mother also told the social worker she and Father had a history of domestic violence that had been going on for years, but she had only reported one prior incident. Mother told the social worker Father loves L.M. "but is just not good with [Mother]."

The Department social worker interviewed Father as well, and he denied hitting Mother in the shower. He also denied grabbing Mother at her workplace and stated he did not know why she started walking away from him when she saw him. Though Father admitted to putting his hand on Mother when he caught up to her, he denied hitting, grabbing, or dragging Mother. Father further denied there had been any domestic violence in the past.

A few weeks later, Mother informed a Department social worker she had not sought to keep in place a restraining order against Father because she did not think she needed one. In early April, shortly after the incidents of domestic violence described above, L.M.'s teacher reported L.M. had been acting angry and violent, noting this was a departure from his behavior earlier in the school year, when he was usually a happy child.

B. Initial Proceedings

The Department obtained a removal order and detained L.M. from Mother and Father in early May 2018. A week later, the Department filed a two-count petition asking the juvenile court to assume jurisdiction over L.M. pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).¹

As ultimately sustained by the juvenile court,² the petition alleged Father and Mother have a recent history of domestic

¹ Undesignated statutory references that follow are to the Welfare and Institutions Code.

² The petition was amended by interlineation at the jurisdiction hearing, pursuant to L.M.'s request. The amendments changed the description of the domestic violence

violence in L.M.'s presence, specifically referencing the aforementioned episodes that occurred when Mother was taking a shower and working at the Pep Boys. The petition further alleged that Mother failed to protect L.M. because Mother allowed Father to remain in the home and have unlimited access to L.M., that Mother demonstrated an unwillingness to protect L.M. from Father, and that Father's violence and Mother's failure to protect L.M. placed L.M. at risk of serious physical harm.

At the initial detention hearing, the trial court ordered L.M. detained. Mother requested a temporary restraining order against Father, which the court issued.

C. Jurisdiction

Prior to the jurisdiction hearing, the Department re-interviewed Mother and Father. The Department also interviewed other individuals familiar with the family.

Mother told the Department her arguments with Father were usually limited to "raised voices, loud shouting, screaming, yelling, [and] name calling" but "nothing physical." She stated the shower altercation was "the only time it got physical since" they moved to Los Angeles. When describing what happened in the shower, Mother said Father hit her face and hit her maybe twice with a fist; she denied Father had kicked her. When describing the episode that occurred while she was working at Pep Boys, Mother said L.M. was in an office with Mother's co-worker and boss, Mother was running away from Father, and Father grabbed her shirt and told her to take L.M. Mother stated

from "ongoing" to "recent" and removed a reference to Father's arrest.

L.M. had not seen the grabbing and Father had never threatened to kill her.

When asked about domestic violence in New York, Mother reported only the incident for which Father was arrested there. As she described it, she and Father had earlier broken off their relationship when he saw her somewhere, became angry, pulled her by her hair through a crowd, and started hitting her. Father was arrested, and Mother obtained a restraining order. Mother did not speak to him for a year, but the two later decided to reconcile, as Mother put it, for L.M.'s sake.

Father told the Department "there was no physical altercation" in late March and characterized the shower altercation as an "argument" or "discussion." He said L.M. was sleeping and did not see or hear that argument—or any other that Father and Mother previously had. When describing what happened when he came to Mother's workplace, Father said he arrived to drop L.M. off, saw Mother speed walking, walked up behind her with L.M., and left shortly thereafter. Father denied there was an altercation and denied pulling on Mother's shirt; instead, he said he had put his hand on Mother's back, "resting it like husband and wife." Father also said the New York restraining order was the result of Mother getting hit when she tried to intervene and break up a fight between him and another man.

L.M., when interviewed, stated he loves Mother, thinks Father is nice, and misses them both. He also said Mother and Father do not fight and he had never seen them argue. L.M.'s half-sibling, who had lived with Mother and Father in Los Angeles for a time, also denied seeing physical fights between the parents. L.M.'s maternal grandmother said she was aware of the

domestic violence that had occurred in New York but denied knowledge of any domestic violence thereafter. L.M.'s maternal uncle reported Father had hit Mother before.

The Department's jurisdiction report stated Father had registered for a domestic violence program and parenting classes in Los Angeles in early May, around the same time the Department first removed L.M. from Mother and Father. In June, he registered for individual counseling and parenting skills education classes in New York. Father's Los Angeles counselor spoke to a Department social worker in mid-July and reported Father was an open participant in domestic violence class and had identified himself in the group as a domestic violence perpetrator. The counselor also stated Father's program was on hold because Father left the program five weeks before, citing a family emergency, and had not yet returned.

At the jurisdiction hearing, the juvenile court granted Mother a one-year restraining order against Father. After hearing Father's testimony regarding participation in programs³ and argument from the parties, the juvenile court sustained both counts of the petition. The court found "ample evidence that the child is at substantial risk of serious physical harm" based on "past incidents of domestic violence as well as inferences" from "the parents[] attempts to sort of distance themselves from what

³ Father testified in pertinent part as follows. Father spends one to two weeks per month in New York. He participates in programs in Los Angeles and New York while in each respective city. Father told his Los Angeles counselor in June that he would be absent to attend his daughter's graduation and to attend to business in New York, and he had only recently returned to Los Angeles.

has happened” Among other things, the court noted Mother appeared to have “go[ne] back on some of her statements about what happened, for example, at the Pep Boys.” While the court acknowledged Mother and Father had enrolled in programs and stated they loved L.M., the court also stated it thought “the parents have some serious work ahead.”

D. Disposition

Prior to the disposition hearing, the Department submitted a last minute information report that revealed a court officer observed Mother and Father getting into a car together when leaving the earlier jurisdiction hearing, despite the court-issued restraining order. At the disposition hearing, the juvenile court noted it was concerned that the parents were in violation of a New York protective order and appeared to be in violation of the current restraining order.⁴ The court commended Father for starting programs and noted Father was making steps in the right direction. But the court found it was too early to return L.M. to Father’s custody and stated it would like to see further progress by Father. The juvenile court declared L.M. a dependent under section 300 and ordered him removed from the parents’ custody.

II. DISCUSSION

Father and the Department agree that Father’s challenge to the disposition order removing L.M. from his custody has been mooted by the juvenile court’s decision, in February 2019, to

⁴ Mother was not present at the hearing because she was in New York for her daughter’s high school orientation.

return L.M. to Father.⁵ We treat the challenge to the disposition order as withdrawn and need not discuss it further.

Father's challenge to the juvenile court's jurisdiction finding remains justiciable, however, and we hold the finding of jurisdiction under section 300, subdivision (b)(1) is supported by substantial evidence.⁶ As we shall explain in greater detail, the evidence in the record establishes Father was the aggressor in two recent incidents of domestic violence against Mother, one of which occurred while L.M. was present in the family home and one of which occurred at least partially in L.M.'s immediate presence. Coupled with Father's denial that his behavior constituted domestic violence and evidence that Mother and Father had violated the court-issued restraining order, the juvenile court had a solid evidentiary basis to conclude there was a continuing substantial risk of serious physical harm to L.M.

"Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child if the 'child has suffered, or there is a substantial risk that the child will suffer,

⁵ We granted the Department's request to take judicial notice of the minute order returning L.M. to Father's custody. (Evid. Code, §§ 452, subd. (d), 459.)

⁶ "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)).

serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or . . . by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.’ (§ 300, subd. (b)(1).)” (*In re L.W.* (2019) 32 Cal.App.5th 840, 848.) “[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction.” (*I.J.*, *supra*, 56 Cal.4th at p. 773.) Rather, there need only be “a ‘substantial risk’ that the child will be abused or neglected.” (*Ibid.*) “In reviewing . . . jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them.” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Courts have repeatedly held a child’s exposure to domestic violence may support jurisdiction under section 300, subdivision (b)(1). (See, e.g., *In re Jesus M.* (2015) 235 Cal.App.4th 104, 112-113; *In re T.V.* (2013) 217 Cal.App.4th 126, 134-135 (*T.V.*); *In re R.C.* (2012) 210 Cal.App.4th 930, 941-942; *In re E.B.* (2010) 184 Cal.App.4th 568, 575-576; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 (*Heather A.*)). “Domestic violence impacts children even if they are not the ones being physically abused, ‘because they see and hear the violence and the screaming.’ [Citation.]” (*T.V.*, *supra*, 217 Cal.App.4th at p. 134; see also *Heather A.*, *supra*, 52 Cal.App.4th at p. 194 [“domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”].)

The domestic violence between Mother and Father in this case had begun years earlier, though Mother had only reported one prior incident. The reported incidents of domestic violence

were also troubling in their severity. During the altercation that led to the restraining order in New York, Father pulled Mother through a crowd of people by her hair and hit her twice. During the shower altercation, which occurred while L.M. was in the family home, Father punched and kicked Mother, leaving her with a mark under her eye and two lumps on her head. During the incident at Mother's workplace, which the evidence indicates L.M. at least partially observed, Father chased Mother around the store and pulled her shirt to drag her. Additionally, Mother's earlier statements to the Department indicated Father had threatened to kill her in the past.

There was also evidence of a continuing risk of harm to L.M. While Father had enrolled in domestic violence and parenting programs and apparently identified himself to his domestic violence group as a perpetrator, he continually denied the existence of domestic violence when speaking to Department social workers. His participation in programs also was inconsistent (perhaps due to his bicoastal living situation). As for Mother, she minimized the seriousness of the domestic violence in her later interview with the Department when she contradicted her earlier statements by denying Father had kicked her during the shower altercation and by stating L.M. had been in an office during the workplace incident and had not witnessed any of it. Additionally, there was evidence Mother and Father had violated the restraining order the juvenile court issued in this case and, earlier, the protective order that had been issued in New York.

Father, citing *In re Alysha S.* (1996) 51 Cal.App.4th 393 (*Alysha S.*), contends the incidents of domestic violence are not sufficient to support jurisdiction here because L.M. neither

perceived nor was affected by them. Father argues this is true because L.M. was sleeping during the first incident and there was some dispute as to whether L.M. witnessed the incident at Mother's workplace. *Alysha S.* is inapposite for two reasons.

First, contrary to Father's contention, there is substantial evidence L.M. witnessed at least the latter incident of domestic violence. In her initial report to the police, Mother stated L.M. walked into her workplace while Father was grabbing the back of her shirt, and that Father released her shortly thereafter. Moreover, while the parents claimed L.M. did not witness the shower altercation, it was a serious incident that occurred while L.M. was in the family home. Even putting the alleged workplace episode aside, when considering Father's consistent history of engaging in domestic violence and the parents' equally consistent history of violating court-issued restraining orders intended to prevent such violence, the juvenile court could properly determine there was an unacceptably high risk yet another serious episode of violence between the parents would occur—and that L.M. would be caught in the middle this time rather than “fast asleep” (as Mother said he was during the shower altercation). Such a determination is particularly justified given the recency of the two alleged episodes of domestic violence (within a month and a half of the filing of the dependency petition and four months of the jurisdiction hearing), see, e.g., *T.V.*, *supra*, 217 Cal.App.4th at p. 133, and Father's unqualified denial throughout the dependency proceedings that he had ever been violent with Mother (see, e.g., *In re M.R.* (2017) 8 Cal.App.5th 101, 109).

Second, the court in *Alysha S.* found the petition there insufficient because it did not *allege* the father's domestic

violence against the mother was “perceived by or affected the child.” (*Alysha S.*, *supra*, 51 Cal.App.4th at p. 398.) Here, the Department alleged L.M. was present for at least one episode of domestic violence, and substantial evidence supported the trial court’s jurisdictional finding based on that allegation.

DISPOSITION

The juvenile court’s finding of dependency jurisdiction is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.